

WEBINAR

Welcome

Employment Law:

What did I miss in 2020 ... and what's in store for 2021?

SH ∞ SMITHS

Introduction

- The COVID-19 pandemic has dominated the employment law landscape over the last year.
- In this session, we take a look at some non-Covid developments that you could be forgiven for having missed during 2020 and look forward to what we can expect in 2021.
- So, what might you have missed?....



Updates

Looking back....

- April 2020 changes
- Termination Payments
- Vicarious Liability for employers
- Tribunal procedures/ACAS conciliation

Looking forward...

- Brexit!
- Consultation on Restrictive Covenants
- Exclusivity Clauses
- Gender/Ethnicity Pay Gap Reporting
- IR35 Regime
- Vaccinations
- Immigration

April 2020 Changes

Employment Contracts

The Employment Rights Act 1996 provides that certain information must be given at the start of employment (sometimes called a Section 1 Statement). Various changes were introduced in April 2020:

- A written statement must now be provided to both employees and workers and include additional information, including:
- The hours and days of the week the worker or employee is required to work;
- Entitlement to paid leave;
- Details of any probationary period;
- Details of mandatory training provided by the employer (and at whose expense); and
- Details of benefits not covered elsewhere.

April 2020 Changes

Vento Bands

The benchmarks for injury to feelings awards in discrimination and whistleblowing claims also increased to:

- *Lower Band:* £900 – £9,000
- *Middle Band:* £9,000 - £27,00
- *Upper Band:* £27,000 - £45,000

Parental Bereavement Leave

Employed parents who have lost a child under the age of 18 or suffered a stillbirth from the 24th week of pregnancy, have been entitled to take statutory leave since April 2020. This right allows for two weeks' leave whether they are consecutive or not. Statutory pay is limited to employees with more than 26 weeks' continuous service and who earn in excess of the lower earnings limit.

See our [Article](#) for further information on the tricky issues arising from the April 2020 changes.

Termination Payments

Taxation of Termination Payments

- From April 2020, termination payments made in excess of £30,000 will be subject to National Insurance deductions. This is something to bear in mind when payments are being made and negotiations are taking place.

Cap on Public Sector Termination Payments

- Government brought in limit of £95k in November 2020.....and scrapped this in February 2021.

Vicarious Liability – or they did what?!!

WM Morrisons Supermarkets Plc –v- Various Claimants – Supreme Court decided that Morrisons were not vicariously liable for a deliberate and significant data breach by a member of the company's audit team.

“Close connection” test – key question is whether the wrongful act by the employee is so closely connected to the authorised activities that it can be fairly regarded as being done by the employee in the ordinary course of their employment.

Similar conclusion drawn by the Supreme Court in the case of **Barclays Bank Plc –v- Various Claimants** – Bank not vicariously liable for sexual assaults alleged against self-employed medical practitioner instructed to conduct medical assessments on prospective employees.

Employment Tribunal/ACAS changes

ET changes – Intention to reduce bureaucracy and increase Tribunal capacity.

Measures include Judges from other jurisdictions sitting in ETs; increase in functions passed down to legal officers; and changes to make it easier to conduct remote hearings.

ACAS changes – Conciliator can contact parties to address errors on the Early Conciliation (“EC”) Form at any time during the EC period.

EC period now extended to six weeks’ duration.

UPCOMING CHANGES

Brexit...

Article 50 was triggered on 29 March 2017 beginning the process of the UK leaving the EU. The UK left on 31 January 2020 and the transition period ended at 11pm on 31 December 2020.

What changes will there be for employment law?

Protection of Workers' Rights

The UK government remains committed to ensuring that UK workers' rights remain aligned with EU employment protection even after the UK's withdrawal:

- Discrimination laws
- Equality and Human Rights
- Family related leave
- Transfer of Undertakings / Collective consultation
- Holidays and Working Time

Departure from retained EU Case Law by UK Courts and Tribunals

The European Withdrawal Act 2018 ends the principle of supremacy of EU law:

- It will no longer apply to any domestic enactment or rule of law passed or made on or after the end of the transition period.

EEA (and non-EEA) Workers in the UK Labour Market

There are new UK immigration rules for non-UK nationals wanting to live and work in the UK.

- Entry will be decided on the Government's [Points-Based Immigration System](#)



Consultation on Restrictive Covenants

- On 4 December 2020, the Department for Business, Enterprise, Innovation and Skills (BEIS) opened a consultation on measures to reform post-termination restrictions, specifically non-compete clauses in employment contracts.
- The consultation is exploring the possibility of banning them altogether.
- The government previously consulted on this proposal but decided to only introduce a ban on exclusivity clauses in zero hours contracts in 2015.
- It is revisiting the topic again, as it is mindful that low earners have been particularly adversely affected by the COVID-19 pandemic, and many employers are currently unable to offer their employees sufficient hours for them to make ends meet.
- Consultation closed 26 February 2021.

Exclusivity Clauses

- On 4 December 2020, BEIS also opened a further consultation on extending the ban on exclusivity clauses to all employment contracts.
- In 2015, their use was banned in zero hours contracts, and the law now renders void and unenforceable, any provision in a zero hours contract which prohibits a worker from either:
 - Doing work or performing services under another contract or under any other arrangement; or
 - Doing work or performing services under another contract or under any other arrangement without the employer's consent.
- The possible extension to all employment contracts is to explore whether employers should be prevented from contractually restricting low-paid employees (typically earning £120 a week or less) from working elsewhere.

The consultation can be found [here](#) and closes on 26 February 2021.

Gender/Ethnicity Pay Gap Reporting

Update on Gender Pay Gap Reporting

Due to the unparalleled pressures placed on UK businesses during the pandemic, the government suspended the requirement of reporting gender pay gap data. EHRC now encourages reporting as soon as possible, but no enforcement action will be taken as long as the business reports by 5 October 2021.

Ethnicity Pay Gap Reporting

On 11 October 2018, the government launched a consultation on proposals for a mandatory approach to ethnicity pay gap reporting along similar lines to gender pay gap reporting. The consultation closed on 11 January 2019. Whilst the government's response is awaited, it has been reported that:

- 73% of those who responded to the consultation support compulsory ethnicity pay gap reporting for organisations with more than 250 staff.
- However, there are mixed views on whether pay gap reporting should be between white and all BAME staff, or a breakdown of ethnic groups. On 1 October 2020, the CBI announced the launch of Change the Race Ratio, a campaign to increase racial and ethnic participation in British businesses, which calls for the disclosure of ethnicity pay gaps by 2022 at the latest.

IR35 Regime... again

The purpose of the IR35 regime (and of other regimes involving intermediaries) is to prevent the avoidance or reduction of tax and National insurance contributions (NICs) by the interposition of an intermediary between the client and worker.

- From 6 April 2021, large and medium-sized organisations in the private and third sectors who engage contractors operating through an intermediary, will be responsible for determining the contractors' IR35 status of that engagement.
- See our helpful two-part summary detailing the essentials of the IR35 tax reforms here:
- [IR35 Tax Reforms - The Essentials \(Part One\)](#)
- [IR35 Tax Reforms - The Essentials \(Part Two\)](#)

To be or not to be... vaccinated? Can employers require their staff to be vaccinated?

- *Pimlico Plumbers* chairman Charlie Mullins recently stated that the firm will rewrite all of its workers' contracts to require them to be vaccinated against Covid-19.
- Employers have announced plans to set up IT systems to track whether workers have been inoculated against Covid-19 – creating form of vaccine passport.
- Plans like these carry employment law risks – employers who forcibly vaccinate staff will likely be committing assault and battery offences.
- In certain sectors (e.g. healthcare) it might be deemed a reasonable management request that could be met with disciplinary action upon refusal and potentially dismissal.
- BUT this carries a risk to reputation of the company.

Vaccinations continued

- Mandatory vaccination could give rise to potential discrimination claims, e.g. against employees who can't have it due to medical conditions, pregnancy, significant allergies or religious beliefs.
- Dismissals based on refusal to vaccinate could lead to unfair dismissal claims.
- Alternative option – adopt a clear communication strategy so that employees are well informed of the impact of Covid-19 on the business.
- Employers could potentially make an offer of new employment conditional upon the employee being vaccinated – this will circumvent unfair dismissal concerns (but the risk of potential discrimination claims remains).

Immigration – EU Settlement Status

- Current EU National employers
- Deadline to apply
- What is now required post-January 2021:
 - Applying for a sponsor licence
 - Maintaining current sponsor licence
 - Complying with sponsorship duties

Immigration – Right to Work Checks

- Right to work checks and prevention of illegal working
- Online right to work checks
- Manual right to work checks

New Immigration Rules

- New rules overview
- New routes for work visas
- Other changes

WEBINAR

Your hosts

Connect with your hosts on LinkedIn by scanning the relevant QR code below.



Rachel Harvey, Legal Director
rachel.harvey@shoosmiths.co.uk



Kevin McCavish, Partner
kevin.mccavish@shoosmiths.co.uk



Jonathan Naylor, Partner
jonathan.naylor@shoosmiths.co.uk



WEBINAR

Thank you

Please remember to complete the feedback form that will pop up on your screen when you exit the webinar. This will help us to tailor future sessions more closely to your needs.

Visit our events page:

<https://www.shoosmiths.co.uk/insights/events>

